GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Sri Marrivalasa Nukayya, S/o late Jamayya & Sri Marrivalasa Ratnalu, S/o Nukayya, Srikakulam District, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (A.P. Act No.16/1993) against the proceedings No.M.D.Dis.No.1098/2017-C1, dated 12.01.2018 of the District Collector, Srikakulam in cancelling his "ST-KAPU SAVARA" caste certificate – Appeal Petition dismissed - Orders - Issued.

TRIBAL WELFARE (CV) DEPARTMENT

G.O.Ms.No.06 Dated. 18.01.2024

Read the following:-

1. Proceedings of the District Collector, Srikakulam, M.D.Dis.No.1098/ 2017-C1, dated 12.01.2018.
2. Appeal Petition filed by Sri Marrivalasa Nukayya, S/o late Jamayya & Sri Marrivalasa Ratnalu, S/o Nukayya, through his Counsel, received through U.O.Note No.14024/9/2018-Ser.II-Rev, Revenue (Ser.II) Department, dated 29.06.2018.
3. Govt. Memo No.11021/42/CV.2/2018, dated 11.07.2018 & 07.08.2018.
4. From the District Collector, Srikakulam, Lr.Rc.No.1241/2018-C1, dated 17.08.2018.
5. Govt. Memo No.11021/42/CV.2/2018, dated 17.09.2018, 27.12.2018, 09.01.2019, 23.01.2019, 09.10.2019, 13.11.2019, 26.06.2023, 01.08.2023 & 06.10.2023.

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ORDER:

In the Proceedings 1st read above, the Collector & District Magistrate, Srikakulam had issued orders cancelling the "ST-Kapu Savara" community certificate of Sri Marrivalasa Nukayya, S/o late Jamayya & Sri Marrivalasa Ratnalu, S/o Nukayya, Srikakulam District, by upholding the endorsement of the Tahsildar, Saravakota vide Rc.No.301/2016-B, Dt.29.10.2016, rejecting the claim for issuance of Kapu Savara (ST) Caste Certificate is hereby upheld.

2. In the reference 2nd read above, Sri Marrivalasa Nukayya, S/o late Jamayya & Sri Marrivalasa Ratnalu, S/o Nukayya, has filed Appeal Petition before the Government against the Proceedings of the District Collector, Srikakulam. After examining the said Appeal Petition, Government have admitted the same and Para-wise remarks on the grounds filed by the Appellant along with original connected records were called for from the District Collector, Srikakulam vide Govt. Memo 3rd read above.

3. In the letter 4th read above, the Collector & District Magistrate, Srikakulam has furnished the para-wise remarks on the Appeal Petition filed by Sri Marrivalasa Nukayya, S/o late Jamayya & Sri Marrivalasa Ratnalu, S/o Nukayya.

4. The present Revision Petition is filed by Sri Marrivalasa Nukayya, S/o Late Jamayya and Smt. Marrivalasa Ratnalu, W/o Nukayya, R/o Burujuwada Village, Saravakota Mandal of Srikakulam District under Section 8 of Andhra Pradesh (Schedule Castes, Schedule Tribes And Backward Classes) Regulation of Issue of Community Certificates Act, 1993) R/W Rule 12 of Andhra Pradesh (Schedule Castes, Schedule Tribes And Backward Classes) Issue of Community, Nativity And Date of Birth Certificates Rules, 1997, aggrieved by the proceedings of the District Collector, and District Magistrate, Srikakulam, Vide proceedings No.D.Dis.No.1098/2017-C1, dated.12.01.2018 upholding the endorsement of the Tahsildar, Saravakota issued vide Rc.No.301/2016-B. Dt.29.10.2016, rejecting the claim for issuance of Kapu Savara (ST) Caste Certificate.

5. The case came up for hearing finally on 28-10-2023. The Petitioner was absent in spite of noticed had been served on him to appear before the authority. There was also no representation. Official respondent was present. Heard parties. On 26-08-2023, the petitioner was present and requested time to file Written Submissions along with documents, last chance was given to him to submit and posted the matter to 28-10-2023. Similar requested was also

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made by the petitioner on earlier hearing date ie. 15-07-2023 and the case was posted to last chance to written submissions on 26-08-2023. Therefore it is decided to dispose off the case on merits since the case has been pending since 2018 and sufficient opportunity was provided to the Appellants to represent their case. The appellate authority has observed that ;

I. The main grounds of the Petitioners are that they belonged to Schedule Tribe Community (Kapusavara by caste) and that the 1st petitioner earlier married one Narayanamma, and they are having one daughter and that later the said Narayanamma died and then the 1st petitioner married to the sister of Narayanamma i.e 2nd petitioner and that the petitioners are having two daughters and that her sister namely Ramanamma/ST married Tadella Venkatarao, S/o Late Sriramulu who belong to backward community a resident of Icchapuram, Srikakulam District and they gave their son by name Kiran Sai Kumar on 04.09.2000 to the Petitioners as they do not have son and he was brought in the house of petitioner's during his childhood in the "Traditional Habitat" and that he was adopted by them through a registered adoption deed executed by Tadella Venkatarao and his wife Ramanamma on 05.12.2013 and child name was recorded as Marrivalasa Kiran Sai Kumar in TC and Aadhaar card and that they made an application through Mee-seva online dated 20.08.2016 under Section 3(1) of Andhra Pradesh (Schedule Castes, Schedule Tribes And Backward Classes) Regulation Of Issue Of Community Certificates Act, 1993 r/w Rule 4 of Andhra Pradesh (Schedule Castes, Schedule Tribes And Backward Classes) Issue Of Community, Nativity And Date Of Birth Certificates Rules, 1997 to the 2nd respondent/Tahsildar for issuance of Schedule Tribe Community Certificate in favour of their adopted son and that the 2nd respondent without conducting proper enquiry and examining the documentary evidence issued an endorsement dated 29.10.2016 rejecting their application and that being aggrieved they had filed an Appeal before the 1st respondent/Collector who in turn without examining material evidence and without applying his mind and relied on the enquiry conducted by the 1st respondent had upheld the endorsement and that the impugned endorsement was passed without following the procedure contemplated under Rule 5 (a)(b)(c) and (e) & (i) of the Rules 1997 and that the collector relied upon the statements of the villagers who are having political animosity towards them and that respondents failed to consider the customary adoption which is applicable in their case and impugned orders of the respondents are contrary to the provisions of the aforesaid statute and offends Articles 14, 15 (4) & 21 of Constitution of India and finally requested to set-aside the impuged order passed by the 1st respondent.

II. The Collector/ 1st respondent submitted para-wise remarks denying the grounds of revision petition and stated that the impugned orders passed by the respondents in the case are in accordance with the provisions of the Act 76/1993 and Rules 1997 made there under and an elaborate enquiry was held at the village level by the 2nd respondent and enquired the individuals belonging to STs, relatives of the Revision Petitioners here in, Scheduled Tribe Association people and other caste people inhabited the village, which reveals that, they have never seen Mr.Kiran Sai Kumar in the village Burujuwada and they do not know about the adoption said to have been effected and further stated that Mr.Kiran Sai Kumar is the son of Tadela Venkatarao of Amadalavalasa Mandal, who belongs to Turpukapu (BC-D) caste, but not 'Kapu Savara' (ST) and that moreover "Section (2)(2) of the Hindu Adoptions and Maintenance Act, 1956 , shall not apply to the STs as such adoption claimed is and void and an ample opportunity was provided to the Revision Petitioners herein during the enquiry and they failed to produce adequate evidence in support of their claim of Mr.Kiran Sai Kumar as 'Kapu Savara' (ST) and that the Transfer Certificate and Aadhar Card are not authenticate documents to prove the community status as ST and the entries made in such documents on the basis of self-declaration and there will be no mechanism/procedure prescribed for verification of caste status at the time of admission into educational institutions and similarly in the case of the Aadhar card as such they do not prove the community status of the claimant.

III. The present Revision Petition is arising from the impugned endorsement of the Tahsildar, Saravakota Mandal of Srikakulam District /2nd respondent who has issued an endorsement rejecting the application submitted by the Revision Petitioners for issuance of "Kapu Savara" S.T. community certificate in favour of Kiran Sai Kumar, by claiming themselves that Kiran Sai Kumar is their adopted son and the Collector upheld the endorsement in an appeal filed by the Revision Petitioners here against the said endorsement.

[Contd..on P.3]

IV. Now the only question falls for consideration is whether the impugned order passed by the District Collector upholding the endorsement of Tahsildar rejecting the community status as Kapu Savara-ST of the adopted son namely Mr Marrivala Kiran Sai Kumar, of the Revision Petitioners is liable to be set-aside?

V. The main contention of the Revision Petitioners is that they belong to "Kapu Savara" ST community and adopted a minor boy Kiran Sai Kumar under Hindu custom on 05.12.2013 through a registered adoption deed and he was brought up in their traditional habitat and the caste of his adopted son was recorded in all school records as "Kapu Savara" S.T, and claimed to issue "Kapu Savara" ST community certificate in favour of Kiran Sai Kumar for education purpose and he was brought up in their traditional habitat and the impugned orders were passed without following the procedure contemplated under Rule 5(a)(b)(c) (e) and (i)

VI. Therefore there is need to refer the relevant section of the Act 1993 and Rules 1997.

Section 4 deals about the Community Certificate to be issued by Competent Authority: - (1) The Competent Authority may, on an application made to it under Section 3, satisfy itself about the genuineness or otherwise of the claim made therein and thereafter issue a Community Certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing. A certificate in regard to community issued by any person, officer or authority other than the Competent Authority shall be invalid. (2) Before the issue or rejection of a certificate under sub-section (1) the Competent Authority shall follow such procedure as may be prescribed. The procedure for verification is contemplated under Rule 5 of Rules 1997.

VII. Rule 5(a) On receipt of the application, the Competent Authority or any officer authorized by him in this regard shall ensure that the applicant has furnished complete information in all the columns of Form I/II and; shall then give the acknowledgement slip as appended to Form I/II, in token of having received the application. The Competent Authority shall then verify the information/documents/ evidence furnished by the applicant/parent/guardian in Form I/II. If the Competent Authority is satisfied with the correctness of the information/documents/evidence furnished by the applicant/parent/ guardian, he shall issue the Community, Nativity and Date of Birth Certificates in Form III within 30 (thirty) days of the receipt of the application in Form I/II. The Competent Authority shall specify in Form III the sub-caste of the SC claimant and the sub-tribe/sub group of the ST claimant as listed out in Annexure I appended to these Rules.

VIII. Rule 5 (b) says "If the Competent Authority feels that further enquiry is necessary, he shall then examine the school records, birth registration certificate, etc. Rule 5 (c) speaks about the format for issuance of notice and time stipulated there in to attend the enquiry etc. Rule 5 (e) speaks about the reasonable opportunity to the applicant/parent/guardian to produce evidence in support of their claim and enquiry thereupon; and Rule 5(i) in case of doubtful claims the competent authority shall refer the matter to the Chairman of the Scrutiny Committee formed at the district level under Rule 8 for the recommendations of the Committee etc.

IX. In the present case the competent authority examined the documents/evidences furnished by the Revision Petitioners and also field enquiry report and legal dimension of the validity of adoption deed and issued an endorsement rejecting to issue community status certificate as ST to Mr Kiran Sai Kumar. The competent authority is satisfied that there is no need to conduct any further enquiry in the case and follow the other procedures contemplated under Rule 5(b)(c)(e) and (i) to pass an order since the main claim on the basis of adoption deed itself is legally and factually not tenable. The records show that the competent authority is not satisfied with the documents furnished to issue community status certificate as ST, and thus the application has been rejected. Therefore there is no deviation in the following the procedure prescribed under Act and Rules by the respondents.

X. The main question in the present case further is whether adoption in the cases of STs is permissible under law?

[Contd..on P.4]

XI. As per the records the Revision Petitioners are not issue less. They have daughters but have no son. On the other hand, the natural parents have only son. If son is given adoption to the Revision Petitioners, they too will do not have a son, The adoption deed even is not according to the customs of Tribes. Because the deed itself got registered under the provisions of the Hindu Adoptions and Maintenance Act 1956 but not in a mode of any customary resolution.

XII. As per "Section (2)(2) of the Hindu Adoptions and Maintenance Act, 1956 states that notwithstanding anything contained in Sub-Section (1) nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the constitution unless the Central Government by notification in the official Gazette, other wise directs. Therefore Scheduled Tribes status claim through adoption is not valid."

XIII. Moreover the field enquiry report shows that the villagers of Burujuvaeda where in the Revision Petitioners have been living, stated that they are unware about the adoption in question, and Mr kiran Sai Kumar is not related to their village. Therefore the factual field reports disproving the claim of the Revision Petitioners that Mr kiran Sai Kumar was brought up by the Revision Petitioners from the child hood and the village is his traditional habitat, and adoption was effected through customary mode.

XIV. The place of upbringing, place and way of living are relevant factors to be taken into account for considering whether the adopted son is entitled to claim the community status as ST or not? In this case there is no evidence in support of the claim of the Revision Petitioners in this regard.

XV. The legal effect of giving a child in adoption is to transfer the child from the family of his birth to the family of his adoption and as held by the Hon'ble Supreme Court in "Basavarajappa" case (2005) 12 SCC 290 no right to claim reservation springs automatically merely by virtue of adoption.

XVI. The judgments passed in "Rameshbhai Dabhai Naika"((2012) 3 SCC 400), "Valsamma Paul" cases (AIR 1996 SC 1011) and AS Sailaja v. Principal, Medical College, Kurn AIR 1986 AP 2O9) reflect on the object behind reservation under the Constitution of India that reservation to scheduled caste and scheduled tribe is rooted in the social history of such caste and community. In the opinion of the writ Court, the appellant who did not suffer any deprivation even after his adoption if is allowed to compete with a person who suffered social indignities and deprivations since the time of his birth, the object of introducing the scheme of reservation would be frustrated.

XVII. When the petitioners claiming that the adopted son belongs to scheduled tribe, the burden of proof lies on them and it is their responsibility to produce necessary evidence/ documents while applying in Form I/II to the Competent Authority. Thus, it is clear from Rule 6 that the burden heavily lies upon the petitioners to produce evidence in support of their contention. In this case the Revision Petitioners failed to substantiate their claim.

5. Government after careful examination of the appeal petition and the circumstances stated supra and in exercise of the powers conferred under Section 7(2) of A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made there under, decide that the proceedings of the Collector & District Magistrate, Srikakulam Vide proceedings No.D.Dis.No.1098/2017-C1,dated 12.01.2018 upholding the endorsement of the Tahsildar, Saravakota issued vide Rc.No.301/2016-B. Dt.29.10.2016, rejecting the claim for issuance of Kapu Savara (ST) Caste Certificate is hereby upheld and the appeal petition filed by Sri Marrivalasa Nukayya, S/o late Jamayya & Sri Marrivalasa Ratnalu, S/o Nukayya, does not deserve any interference and the appeal petition is hereby dismissed. As a sequel interim orders if any passed in this matter shall stand vacated.

6. The Collector & District Magistrate, Srikakulam is directed to take necessary consequential action in the matter, as per the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made therein.

[Contd..on P.5]

7. The records (Rc.No.1098/2017-C1, containing NF.1-22 pages & CF 1-167) received from the Collector & District Magistrate, Srikakulam are returned herewith in original to the Collector & District Magistrate, Srikakulam and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Collector & District Magistrate, Srikakulam.(we)
(With original Records)**(BY RPAD)**

Sri Marrivalasa Nukayya,
S/o late Jammayya, R/o Burujuwada Village,
Saravakota Mandal, Srikakulam District.-532426.**(BY RP)**

Sri Marrivalasa Ratnalu, S/o Nukayya,
R/o Burujuwada Village, Saravakota Mandal, Srikakulam District.

Mr. G.S.K.Prasad, Advocate,
R/o Plot No.24, Visakha 'A' Colony, Srikakulam District-532 001.

Copy to:
The OSD to Hon'ble Deputy CM(TW)
The PS to Principal Secretary(TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER